Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the	)	MM Docket 93-215
Cable Television Consumer	)	
Protection and Competition	)	
Act of 1992	)	MM Docket 92-266
	)	
Rate Regulation	)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

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Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 93-215
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1. The Cable Telecommunications Association ("CATA"), hereby files comments in the Further Notice of Proposed Rulemaking in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

2. In its Further Notice in this proceeding the Commission has requested comment on "possible alternative definitions" of small cable television systems and small MSOs that it might use for "determining eligibility for special rate or administrative treatment." In addition the Commission requests comment on whether it should use the current Small Business Administration's definition of a small cable company.

3. CATA believes that basing regulatory relief on a company's annual gross revenues is not the best approach to dealing with the issues of regulatory burden. Although in other areas the SBA concept of using gross revenues as an indicator of whether a company is "small" may be effective, administratively convenient, and appropriate, in some circumstances (where, for instance, rules are intended to apply to companies, rather than communities), adopting such an approach uniformly for the cable television industry ignores the reality of community-based activity that must be self-supporting and profitable if it is to survive. Should the Commission determine that a gross revenue figure is appropriate for some purposes, CATA would support the National Cable Television Association's (NCTA) filing in this aspeact of the proceeding. We believe, however, that the better path is for the Commission to continue to measure "size" in terms of numbers of subscribers served in individual communities -- regardless of the size of parent companies so long as federal, state and local rules apply on a franchise by franchise basis. The real issue is not how much money a company makes, but rather the ability of a system at the community level to withstand the Commission's regulations on the one hand and competition on the other.

4. As the Commission itself has realized, no one definition of small cable system will likely suffice to apply to the various regulatory burdens caused by implementation of the Cable Act of 1992. The Act itself speaks of systems with fewer than 1000 subscribers for purposes of granting administrative relief, but it is not clear that this is a "definition." It is certainly not a limitation on Commission action. Nothing in the Cable Act prevents the Commission from excepting certain classes of systems from various of its rules or designing its rules differently for different classes of systems. For some purposes the Commission has used the 1000 subscriber figure to extend regulatory relief, but it has already moved beyond the 1000 subscriber limit by giving special transition treatment for "small operators," those with a total subscriber base from all systems no greater than 15,000, and not affiliated with a larger operator. The 1000 subscriber barrier, if there ever was one, has been broken.

5. Application of the Commission's rules creates exigencies ranging from the most mundane problem of completing complicated forms by systems without access to CPAs to the issue of how to assure adequate revenue for the participation in various iterations of a telecommunications infrastructure or a national telecommunications superhighway. Systems of a given size are better able to withstand some regulatory burdens. Larger systems can presumably withstand more. It is likely that no single definition will address all the disparate exigencies faced by

different systems. Various alternatives have been suggested by the Commission and others. In filings in this docket on September 23, 1994 and October 13, 1994, CATA has offered an "alternative regulation" option that will permit communities and small systems to agree to negotiated regulation at the local level in order to create the economic certainty needed for those systems to better provide new services. We incorporate those filings here. In various filings over the last two years, both the NCTA and the SCBA have suggested remedies to provide relief for "small" systems. The Commission should take this opportunity as it is attempting to "establish a more complete record for purposes of promulgating final rate rules," to finally resolve these issues.

6. If the Commission is regulating cable systems at the community or franchise level, then the Commission should grant relief from regulatory burdens at the community level as well. CATA urges the Commission to consider a simple community unit subscriber number as the basis for providing small system exceptions, limited or otherwise, from the cable televsion regulations. Obviously, a subscriber number cannot be chosen with precsion. Whatever number is chosen will result in some criticism, both from cable operators arguing special circumstances and consumer advocates for whom no regulatory burden in cable systems seems too heavy to bear.

As the Commission, itself, now must realize, the "fewer than 1000 subscriber" limit is too low. Systems with only a few thousand subscribers simply do not generate the revenue to support their required participation in a very complicated regulatory scheme. At some point, possibly around the 5000 subscriber level, systems begin to generate advertising revenues and revenues from the provision of unregulated services. Arguably, these systems are better able to withstand regulatory burdens. It is not merely out of nostalgia, therefore, that we remind the Commission that, in the past, it used a figure of 3500 or fewer subscribers as a measure for the applicability of various rules. For instance, local origination and public, educational and government access channels were all required for systems with more than 3500 subscribers on the theory that these systems would begin to generate the revenue required to support such services. The 3500 subscriber figure appears appropriate now, as well, and should be considered again.

7. It should be emphasized that some regulatory policies impact the ability of very small systems to survive at all, especially facing competition that the Commission deems so desirable. But, although it has often repeated the mantra that there are benefits to competition, the Commission has yet to articulate a policy with respect to how its regulatory program may impact the <u>ability</u> to compete -- or whether it even finds it desirable that systems of all sizes be <u>able</u> to compete.

These are fundamental issues the Commission must also address -- issues that will help determine how the Commission is to define "small cable system."

8. Throughout this proceeding the Commission has distinguished cable systems by ownership. Whatever relief has been granted to small systems or small operators has been unavailable to the same sized systems owned by the larger MSOs even though the individual systems may be very small indeed. For instance, in its recently adopted "going forward" rules, the Commission quite properly has permitted small independently owned systems or systems owned by small MSOs to pass through the headend costs associated with adding channels, but has denied the same relief to systems of the same size if they are owned by larger companies. CATA will not comment on how this distinction will play in the arena of public opinion, but from an administrative point of view, it makes little sense and has a result directly opposite the Commission's stated goal of creating incentives for the addition of new programming.

9. A case in point is the situation faced by Triax Communications Corp. Triax serves 1075 communities from 747 headends and has a total subscriber base of 348,000. The average size of a Triax system is only 324 subscribers. By any measure, whether using most of the annual gross revenue figures proposed, or by any current Commission definition, Triax systems

are not entitled to regulatory relief. If Triax were to add but one channel to each system by spending $5000 for equipment at each of its headends, the total cost would be $2,330,000. Yet Triax systems would not be permitted to pass through to subscribers the headend costs for adding channels. Under the Commission's rules, each tiny Triax system would have to engage in a cost-of-service proceeding in order to recoup the expense. The subscribers will not be able to get additional programming and the company, franchise authorities and the Commission will all be burdened by paperwork. The subscribers, the company, the franchising authority and the Commission will be losers. Surely, there can be no useful, public purpose served by this result. In this case, the Commission focused on the recipient of relief, rather than the purpose.

10. The problems faced by small systems are the same, regardless of whether they are owned by a large company. The advantage of large company ownership may be that some programming is less expensive or that some equipment can be purchased in bulk, but surely that savings alone (where it exists) cannot begin to justify ignoring the basic mathematics that dictates that fixed costs spread out over fewer subscribers produces less revenue. Nor can the Commission reasonably argue that the profits that may be generated by large companies should be used to subsidize their small systems. The Commission certainly has not designed its rate regulations in this manner.

Nothing in the rules would permit a company to charge higher rates to subscribers in large communities in order to subsidize subscribers in small communities. The Commission could have adopted such an approach as a matter of sound public policy (or social engineering, depending on one's point of view) but it did not. Under the Commission's rules, all systems, whatever their size, stand alone. And under the more basic rules of business, all systems, whatever their size, must be operated at a profit. The rates the Commission permits are not based on the combined revenues and expenses of parent companies, but on the finances of individual systems serving individual communities. MSOs are not eleemosynary institutions. Whatever their profits from diverse activities, their small systems must operate at a profit.

11. If the Commission continues to ignore the economic reality of small community cable operation, it is likely that, at some point, companies of <u>whatever</u> size, will choose to discontinue service to systems serving some communities rather than operate unprofitably. The small communities will be relegated to no service or to limited service from other multi-channel providers (such as DSS, MMDS or VDT) who are unfettered by regulation and have no obligation to serve on a community level. The Commission must speak to this issue. It cannot foster competition on the one hand, and pretend there is none on the other. If the Commission's philosophy is that it is acceptable that small communities lose telecommunications service

as an unpleasant by-product of some perverse economic theory, it should articulate this philosophy. If the Commission believes that some benefit will come by forcing large MSOs to abandon traditional small community service it should explain what that benefit is. Or, finally, if the Commission is simply following the theory that "big is bad," it should say so.

12. As an unintended consequence of its regulatory policy, the Commission has placed many small cable systems at risk. This is true at a time when all systems, regardless of size and regardless of ownership, face the necessity (and opportunity) of rebuilding to offer expanded telecommunications service. To some extent, the Commission appears willing to face the small system issue and, in recent rulings, has attempted to redress some of the inequities that were inevitable by-products of rules of general applicability. We find the Commission's actions encouraging. In order to successfully address the small system issue once and for all, however, the Commission must adopt policies that enable small systems, <u>all</u> small systems, to compete in the next arena.

13. CATA believes that for purposes of granting regulatory relief, the Commission should define "small cable system" by a subscriber level related to the community served by the system. The Commission's rules apply at the community level and so should its exemptions.

The Commission should consider alleviating regulatory burdens for all systems of fewer than 3500 subscribers. Further, we urge, whatever subscriber level may be chosen, that the Commission not distinguish between systems based on their ownership. To do so places at risk the continued operation of hundreds of small systems. Ulitmately, it will be the public that is the loser.

Respectfully submittted,

THE CABLE TELECOMMUNICATIONS ASSOCIATION.

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